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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,477

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Jens Foegler

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PROPAT, L.L.C.

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CHARLOTTE, NC 28211-2841

EXAMINER

JACOBSON, MICHELE LYNN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,477	<b>Applicant(s)</b> FOEGLER ET AL.	
	<b>Examiner</b> MICHELE JACOBSON	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/1/06</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 6, 7, 10-12, 13, 15-17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito et al. European Patent Application Publication No. 408164 ((hereafter referred to as Ito).

3. Ito teaches a water-resistant matrix web with a food flavoring material disposed on it comprising food flavoring material dispersed on a binder material. (Pg. 2, lines 27-30) The water resistant matrix web is recited to be comprised of natural or artificial fiber materials such as polymers of cellulose and other natural materials (viscose, acetate, etc), polyester, polyamide, polyethylene, polypropylene and viscose coated Manilla paper. (Pg. 2, lines 37-44, 56)

4. The food layer is recited to include herbs, pepper, cheese powder and powders of vegetable extracts. (Pg. 3, lines 8-17) The binder layer for the flavoring material is recited to be comprised of polysaccharides such as starch, modified starch, carboxymethylcellulose and protein such as gelatin. (Pg. 3, lines 22-28) The selection of these materials is recited to result in the food layer being neatly transferred onto the surface of the food disposed in a casing made of such a laminate.

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5. The laminate is produced by applying a solution of the binder layer material to the matrix web followed by applying the food layer material in a powdery, granular or chip form onto the coated web and drying the thus formed sheet material. The formed sheet may then be formed into a tube for use as a sausage casing by heat sealing the film or by joining the edges of a non-heat-sealable film with the aid of an adhesive tape. (Pg. 3, lines 33-42) When the sheet is brought into contact with a web substrate food, the food material is transferred from the matrix to the substrate food, thus effectively flavoring or spicing the food. (Pg. 4, lines 7-9)

6. Ito anticipates the adhesively longitudinally seamed sausage casing comprising an edible, essentially water-insoluble, flavor transferring layer comprising gelatin or starch and a flavoring such as herbs, pepper or vegetable flavoring supported on a fibrous matrix comprising natural or synthetic fibers such as cellulose, polyester, polyamide and polyolefin recited in claims 1-4, 6, 7, 10, 11, 15-17 and 19 produced by the method recited in claims 12, 13 and 20.

7. Regarding claim 13 the examiner notes the recitation of the plasticizer is optional and therefore although Ito fails to recite the disposition of plasticizer in the flavor transfer layer disclosed, Ito still anticipates the non-optional limitations of claim 13.

8. Claims 1-3, 5-10, 15, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Niaura et al. U.S. Patent No. 5,085,890 (hereafter referred to as Niaura).

9. Niaura teaches a fibrous cellulose sausage casing substrate (made from cotton or wood pulp) having indicia printed in water soluble material such as caramel protected

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by a water insoluble binder-sealant layer. (Col. 6, lines 24-27, 48-51, Col. 15, lines 58-61, Col. 9, lines 63-65) The binder sealant layer is transferred from the substrate to the surface of the enclosed food thus carrying the indicia with it for labeling of the product upon removal of the exterior substrate casing. (Col. 16, lines 45-49) The binder sealant may be comprised of protein material such as zein. (Col. 17, lines 6-7) Niaura also recites that the casing substrate may further comprise an oxygen barrier layer material. (Col. 18, lines 27-29)

10. The sausage casing comprising a tubular, fibrous, cellulosic substrate comprising an oxygen barrier layer with a layer of water soluble indicia covered by an edible water insoluble binder-sealant layer comprising zein where the edible binder-sealant layer adheres to the proteinaceous food stuff more strongly and to the substrate material recited in claims 1-3, 5-10, 15, 16 and 18 is anticipated Niaura. The examiner interprets the binder-sealant layer recited by Niaura to be equivalent to the edible coating containing dye and/or flavorings as recited in claim 1 since the printed indicia recited by Niaura comprising caramel can be interpreted to be both a dye and a flavoring and the indicia is contained on the binder-sealant layer recited. Additionally, the indicia recited by Niaura is between the exterior substrate layer and the binder sealant, is water-soluble, and can be interpreted as a dye and a layer therefore meeting the limitation of water-soluble material arranged between the substrate layer and the edible coating layer recited in claim 5.

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***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito et al. European Patent Application Publication No. 408164 ((hereafter referred to as Ito).

13. Ito teaches what has been recited above but is silent regarding the disposition of an additional exterior layer on the fibrous substrate layer. Ito also discloses that the inventive casing is alternately desired to be permeable and impermeable to air depending on the product encased. (Pg. 2, lines 48-55)

14. The examiner takes official notice that it is well known in the sausage casing art to use barrier layers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a fibrous cellulosic casing to which a barrier layer had been applied for the substrate to which the inventive coatings disclosed by Ito would then be applied. This obvious utilization of a barrier layer containing substrate would have produced the method as claimed in claim 14.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is

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(571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michele L. Jacobson  
Examiner /M. J./  
Art Unit 1794

/Carol Chaney/  
Supervisory Patent Examiner, Art Unit 1794